

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY -6 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0357-PR
)	DEPARTMENT B
Respondent,)	
)	<u>DECISION ORDER</u>
v.)	
)	
RONALD ALLEN VANBROCKLIN,)	
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20082705

Honorable Clark W. Munger, Judge

PETITION FOR REVIEW DISMISSED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Ronald VanBrocklin

Tucson
In Propria Persona

¶1 Petitioner Ronald VanBrocklin filed a petition for review in this court, purportedly pursuant to Rule 32.9, Ariz. R. Crim. P., asking us to review his “motion to withdraw and/or set aside a plea agreement,” to allow him to withdraw from his plea

agreement, and to order that the charges against him be “dismissed with prejudice.” Because the trial court stayed the Rule 32 proceedings and has not yet ruled on VanBrocklin’s petition, we dismiss his petition for review.

¶2 Pursuant to a plea agreement, VanBrocklin, who was required to register as a sex offender pursuant to A.R.S. § 13-3821, was convicted of failure to provide an address or change of name as required by that statute. The trial court suspended the imposition of sentence and placed VanBrocklin on “probation on the Sex Offender Caseload” for three years. Thereafter, VanBrocklin filed a notice of post-conviction relief, which the court dismissed as untimely.

¶3 The court later granted him permission to refile the notice, and he again initiated Rule 32 proceedings. His appointed counsel filed a notice in lieu of a petition for post-conviction relief, stating he was unable to find a “tenable issue for review” and could not proceed. He requested that the court allow VanBrocklin time to file his own petition. The court granted the request and VanBrocklin subsequently filed a “[m]otion to modify conditions of probation, motion to set aside plea agreement, motion to dismiss,” which the court treated as his petition for post-conviction relief. In that motion, VanBrocklin argued, inter alia, that counsel had been ineffective in several regards and that he had been “threatened and coerced into accepting a plea agreement,” primarily because his indictment had indicated he was being charged with two class-four felonies when in fact one of the charges was a class-six felony.

¶4 VanBrocklin also filed a writ of habeas corpus, in which he argued his conviction had been “without merit and unconstitutional” because it “violate[d] the Ex

Post Facto clause of the United States Constitution.” Although on review VanBrocklin claims the trial court “stated that the Petition for Writ of Habeas Corpus would be addressed and combined with [his] Rule 32 petition,” that fact is not clear from the record. The court stated in its minute entry from the date in question that it was “striking [VanBrocklin’s] pro se pleadings regarding the Rule 32 petition,” but in the absence of a transcript we cannot tell to which pleadings this statement refers. In a later order, the court listed several pro se pleadings it was striking because VanBrocklin was represented by counsel and was not entitled to “hybrid representation.” The writ was not among them.

¶5 In November 2010, for reasons not clear in the record, the trial court ordered the Rule 32 proceedings stayed pending the outcome of a petition to revoke VanBrocklin’s probation. Nothing in the record suggests this stay has been lifted, and VanBrocklin acknowledges on review that the trial court has not yet ruled on his petition. Thus, there is no trial court ruling for this court to review in VanBrocklin’s Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.9(c).

¶6 We reject VanBrocklin’s apparent request for us to consider his motion to withdraw from his plea outside the Rule 32 context. *See State v. Hanley*, 108 Ariz. 144, 146, 493 P.2d 1201, 1203 (1972) (“[A] motion to withdraw a plea of guilty may not be heard after sentencing.”). We likewise reject his apparent request for us to rule on his writ of habeas corpus. Whether the trial court struck the writ or considered it part of VanBrocklin’s petition for post-conviction relief, it was entitled to do so. “Arizona does not recognize a constitutional right to hybrid representation,” and it therefore was within

the court's discretion to strike the pro se writ because VanBrocklin was represented by counsel. *See State v. Cornell*, 179 Ariz. 314, 325, 878 P.2d 1352, 1363 (1994). And, although an order denying a writ of habeas corpus is appealable, *see Rugg v. Burr*, 1 Ariz. App. 280, 280, 402 P.2d 28, 28 (1965), the issues raised in VanBrocklin's purported writ of habeas corpus were not appropriate for review in that context. "In Arizona, the writ of habeas corpus may be used only to review matters affecting a court's jurisdiction." *In re Oppenheimer*, 95 Ariz. 292, 297, 389 P.2d 696, 700 (1964). Thus, "[t]he writ of habeas corpus is not the appropriate remedy to review irregularities or mistakes in a lower court unless they pertain to jurisdiction." *State v. Court of Appeals*, 101 Ariz. 166, 168, 416 P.2d 599, 601 (1966).

¶7 In sum, in the absence of a trial court ruling for this court to review, we must dismiss VanBrocklin's petition. *See* Ariz. R. Crim. P. 32.9(c) ("Within thirty days after the final decision of the trial court on the petition for post-conviction relief . . . any party aggrieved may petition the appropriate appellate court for review of the actions of the trial court.").

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

Judge Eckerstrom and Judge Brammer concurring.